

Appl. No.: 10/753,135  
Amdt. dated 08/22/2005  
Reply to Office action of 07/22/2005

### REMARKS/ARGUMENTS

In the final Office Action dated July 22, 2005, Claims 1-6, 8, 9, and 21-26 are pending, of which Claims 1, 21, and 22 are independent. Claims 1-6, 9, 21-24, and 26 are rejected as being unpatentable over U.S. Patent No. 1,677,130 to Cherry in view of U.S. Patent No. 6,401,401 to Williams. Claims 8 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherry in view of Williams, presumably further in view of U.S. Patent No. 6,792,725 to Rutherford. Applicant respectfully traverses the rejections as set forth below.

With regard to the rejection based upon a proposed combination of Cherry and Williams, it initially should be noted that both of these prior patents were cited by the Applicant in the IDS filed concurrently with the filing of the application, but they were not applied in the first Official Action. These two patents were also cited in the international search report, included in the Supplemental IDS filed June 3, 2005.

Claim 1 is directed to a flashing for use in a portal installation. The flashing includes a base member having first and second portions, which are disposed at an angle so that their outer surfaces can be disposed against a sill and jamb. A front face plate extends from each of the portions of the base member in a plane generally perpendicular to the first and second portions, and channels are disposed in the first and second portions to direct water toward and through the front face plate. The claimed invention is not taught or suggested by the cited references, either individually or in fair combination.

Cherry is directed to a sill flashing. As shown in Figure 1, member 18 has upstanding flanges 23 and 24 that are bent from the sheet 18, and the confronting edges of the flanges 23 and 24 can be soldered together to define a corner 25. The flange 24 terminates in the plane of sheathing 11, which is on the exterior face of a stud frame 10. See page 2, lines 12-20; page 1, lines 75-82. Thus, portion 26 "extends beyond the flange 24 to permit a marginal area 27 to be bent therefrom to define a turned down flange which contacts with the exterior surface of the lapping 12 underneath the sill 14." Page 2, lines 22-27. Thus, the flange 24 ends at the outer face of the sheathing 11, while the portion 26 extends further outward to the outer surface of the lapping 12 on the outside of the sheathing 11.

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The Office Action indicates that the marginal area 27 of Cherry corresponds to the claimed front face plate and acknowledges that Cherry does not disclose that the marginal area 27 extends perpendicularly from flange 24 (indicated to correspond to the claimed second portion of the base member). However, the Office Action states that "it would have been obvious to extend the front face plate as shown by Williams in order to give the portal further protection." Office Action at page 3, paragraph 7.

Applicant respectfully disagrees. Cherry teaches that the flange 24 is formed by bending the member 18. If flange 24 were extended all the way to the end of the marginal portion 27, it would not be possible to bend the marginal portion 27 or the extended portion of the flange 24 against the outer surface of the wall. That is, at the corner of the extended portion of the flange 24 and the member 18, the connection between those two members would prevent either from being bent flat against the outside of the wall. Neither Cherry nor Williams provides any teaching or suggestion for accommodating such a corner. Further, even if the two members could be bent, e.g., by first cutting along the corner between the extended portion of the flange 24 and the member 18, the corrugations in the extended portion of the flange 24 would be disposed horizontally, i.e., such that any water therein would be drained laterally. Neither reference provides any suggestion for such a feature. In fact, Cherry specifically points to the corrugations 21 as preventing lateral seepage. See page 2, lines 52-64.

Moreover, Cherry discloses that the marginal portion 27 is bent from the portion 26, and illustrates that the bent marginal portion 27 is disposed in a space between the outside of the lapping 12 and what appears to be a piece of molding disposed under the sill 14. See Figure 1. That is, the marginal portion 27 extends beyond the lapping 12. The flange 24, on the other hand, terminates at the surface of the sheathing 11, i.e., inward of the lapping 12. No space is provided outward of the sheathing 11 for receiving a bent portion of the flange 24. That is, while the molding provides a space for accommodating the bent marginal portion 27, no such space exists between the edge portion 15 of the sill 14 and the outer surface of the sheathing 11. Indeed, it appears that the edge portion 15 of the sill 14 is disposed flat against the sheathing 11 and/or the building paper 13 on the outside of the sheathing 11. Disposing a bent portion of the flange 24 would prevent the sill 14 from being disposed as shown. Neither reference provides

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any suggestion for disposing a corrugated member between the edge portion 15 and the wall, or any motivation for separating the sill 14 from the wall as would be required.

Further, as noted above, the flange 24 terminates at the outside surface of the sheathing 11. Even if the flange 24 were somehow extended and bent outside the sheathing 11, the bent portion of the flange 24 would be disposed in a different plane than the marginal portion 27. That is, even if the flange 24 were modified as suggested in the Office Action, there would still be no "front face plate extending from each of the first and second portions of the base member in a plane generally perpendicular to the first and second portions." Instead, the portion bent from the flange 24 would be disposed in a plane proximate the outer surface of the sheathing 11 and the bent marginal portion 27 would be disposed in a plane proximate the outer surface of the lapping 12. That the bent portions could not lie in the same plane is evident from Figure 1, in which the edge portion 15 of the sill 14 would prevent any modified portion of flange 24 from being coplanar with the marginal portion 27. Two bent portions, extending separately from the flange 24 and the member 18, and lying in two separate planes, would not define a front face plate extending from each of the first and second portions of the base member in a plane generally perpendicular to the first and second portions.

Accordingly, for each of the foregoing reasons, Applicant respectfully submits that Claim 1 is patentable over Cherry and Williams, taken individually or in fair combination. Claims 2-6, 8, and 9 depend from Claim 1 and are also therefore patentable for the same reasons.

In addition, the various dependent claims provide additional bases of patentability over the cited references. In particular, Claim 5 recites that "each channel is tapered to define an increased depth at the front face plate." For example, this feature is described in the present application as affecting the channeling of water through the front face plate. That is, "as shown in Figure 2, the channels 26, 36 are tapered in a direction away from the front face plate 14, i.e., each channel 26, 36 defines an increased depth at the front face plate 14. Thus, water in the channels 26, 36 generally flows toward the front face plate 14 and exits the channels 26, 36 through the front face plate 14." Page 5, lines 22-26. In other words, each channel has a depth that is increasingly greater toward the front face plate 14 so that water in each channel is directed to and through the front face plate 14. The Office Action states that tapered channels are shown

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in Figures 2-4 of Cherry. Applicant disagrees. Cherry refers to corrugations 21, but does not describe or illustrate any variation in the shape of the corrugations along their length. That is, as shown in Figure 2, the corrugations 21 appear to have the same depth at the end proximate flange 23 as at the end proximate the marginal portion 27. Applicant notes that Cherry does teach that the corrugations can drain water "exteriorly of the lapping 12" (page 2, lines 52-57); however, such drainage is apparently achieved by virtue of the angle at which the entire member 18 is disposed. The angling of the member 18 from the horizontal plane is clearly shown in Figure 1. Accordingly, Claim 5 is allowable over the cited references for this reason, in addition to the reasons set forth above in connection with Claim 1.

Claim 9 further recites that "the flashing is structured to be configured with the outer surface of the first portion of the base member disposed toward one of the jambs of the opening and the outer surface of the second portion disposed toward the sill of the opening such that the flashing can be selectively installed in either of two corners of the opening." The Office Action states that the flashing of Cherry "is structured to be configured with the outer surface of the outer skirt surface of the first portion disposed toward one of the jambs and the outer surface of the second portion disposed toward the sill so that the flashing can be selectively installed in either two corners of an opening; see figure 4 and figure 1." Office Action, pages 3 and 4. Applicant disagrees. Claim 9 recites that the first portion of the base member (which is configured to be disposed against the sill of the opening) can also be disposed toward one of the jambs of the opening. Thus, e.g., the same flashing can be used in either bottom corner of a window installation. Cherry does not disclose such a feature. In fact, the devices shown in Figures 1 and 4, which are referred to in the Office Action, are different. The device in Figure 1 is configured to be disposed at one corner of a window, and the device in Figure 4 is configured to be disposed at a different corner of a window, but the devices are not configured to be interchanged. In fact, it is unclear how either device could be installed in any configuration other than with the marginal portion 27 extending below the sill 14. Accordingly, Claim 9 is allowable over the cited references for this reason, in addition to the reasons set forth above in connection with Claim 1.

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Independent Claim 21 is also directed to a flashing and includes a base member having first and second portions, a front face plate extending from each of the first and second portions of the base member in a plane generally perpendicular to the first and second portions, and channels disposed in at least the first portion of the base member to direct water toward and through the front face plate. Each channel is tapered to define an increased depth at the front face plate. As set forth above in connection with Claim 1, the cited references do not disclose the claimed front face plate, which extends from both of the portions of the base member, and which extends in a plane generally perpendicular to the portions. Therefore, Claim 21 is allowable for the same reasons described above. In addition, Cherry fails to disclose the feature of tapered channels, as set forth above in connection with Claim 5. Therefore, Claim 21 is allowable for this additional reason.

Independent Claim 22 is also directed to a flashing and includes a base member with first and second portions and a front face plate extending from end edges of the first and second portions. Therefore, Claim 22 is also allowable for the reasons set forth above in connection with Claim 1. In addition, Claim 22 recites a number of additional features that further distinguish the claimed invention from the prior art. In particular, Claim 22 recites that each of the portions of the base member has parallel opposite end edges, and the end edges of the first portion lie in respective common planes with the end edges of the second portion. Further, the front face plate extends from end edges of the first and second portions that lie in a common plane, and the front face plate also lies in the common plane. For example, as shown in Figure 1 of the present application, the front face plate 14 lies in a common plane as an edge of the first portion 20 of the base member 12 and an edge of the second portion 30 of the base member 12. As noted above, Cherry fails to disclose a front face plate that extends from both portions, and it would not have been obvious to modify Cherry to include such a feature. As further noted above, even if Cherry were modified, the edges of the two portions would not lie in a common plane and any portion bent from the flange 24 of Cherry would not lie in the same plane as the marginal portion 27 that is bent from the member 18. Indeed, such a configuration is precluded by the location of the edge portion 15 of the sill 14 of Cherry, which is located in the same plane as the marginal portion 27.

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Further, Claim 22 additionally recites "a plurality of channels disposed in the inner surface of at least one of the first and second portions for directing water toward and through the front face plate, with the outer surfaces of the first and second portions each being substantially planar and free of said channels." This feature can be seen in Figures 1 and 4 of the present application. Cherry, in contrast, discloses a corrugated structure in which the corrugations are impressed therein, i.e., by stamping (see, e.g., page 1, line 108 – page 2, line 11). Cherry does not teach such planar surfaces opposite the channels and provides no motivation for this modification. Accordingly, Claim 22 is allowable over the cited references, as are each of the dependent Claims 23-26. In addition, these dependent claims provide additional bases of distinction, similar to the dependent Claims 2-6, 8, and 9 discussed above.

Claims 8 and 25 are dependent on Claims 1 and 22, respectively, and therefore patentable over the cited references for the reasons set forth above in connection with the independent claims. In addition, Applicant respectfully traverses the rejection based on Cherry in view of Williams and, presumably, further in view of Rutherford. (The Office Action does not identify Rutherford as a basis of the rejection, but the Examiner's comments do make note of Rutherford in this regard.) Claim 8 recites that "the first and second portions of the base member include opposite end edges which are parallel to each other, wherein the front face plate extends from one of the end edges of each of the first and second portions, and wherein the channels do not extend through the end edges of the first and second portions opposite the front face plate." As noted above, Cherry does not define a front face plate that extends from edges of both of the first and second portions and it would not have been obvious to so modify Cherry. With regard to the claimed configuration of the channels, the claim recites that the channels do not extend through the edges opposite the front face plate. That is, as shown in Figure 1 and described in the application at page 5, lines 15-26, the channels extend from the front face plate toward the opposite edge (e.g., edge 16 of the second portion 30, opposite the front face plate 14), but do not extend entirely to the edge.

The Office Action states in this regard:

"Rutherford shows a flashing member with channels in first and second portions and the channels do not extend through the end edges of the first and second portions; see

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figure 1. It would have been obvious to one of ordinary skill in the art to alternatively fashion the flashing of Cherry to not extend as stated above in order to provide a smoother transition between the face plate and the first and second portions.”

Office Action, page 4.

Rutherford is directed to a vent device. As shown in Figures 1a and 1b, the vent device has a channeling plate 12 having a plurality of vertically oriented channels 14. Although it is not clear to which figure the Examiner is referring, Applicant respectfully submits that both Figures 1a and 1b illustrate channels 14 that extend through the entire length of the channeling plate 12. Indeed, the channels 14 “provide a passageway for air and moisture.” Col. 2, lines 54-58.

Moreover, even if Rutherford did describe channels that do not extend through the end edges as claimed, there is no motivation in these references to modify Cherry as set forth in the claim. That is, for example, the edge opposite of member 18 that is opposite the marginal portion 27 of Cherry is defined by a bend provided to form the flange 23. Neither Cherry nor the other references disclose a motivation for not extending the corrugations to that edge, especially since the corrugations of Cherry extend not just to the edge but beyond it and through the flange 23. Regarding the supposed motivation set forth in the Office Action (“to provide a smoother transition between the face plate and the first and second portions”), Applicant respectfully submits that the marginal portion 27, which the examiner has indicated to correspond to the claimed front face plate, on the opposite side of the member from the edges in question (i.e., the “end edges of the first and second portions opposite the front face plate”) and are wholly irrelevant to any transition between the front face plate and the first and second portions. Accordingly, Claim 8 is allowable over the cited references for this reason, in addition to the reasons set forth above in connection with Claim 1. Similarly, Claim 25 is allowable for the same reason, in addition to those set forth above in connection with Claim 22.

For the above reasons, Applicant respectfully submits that each of the pending Claims 1-6, 8, 9, and 21-26 is allowable over the cited references. No new issues have been raised in this amendment. The Examiner’s reconsideration is respectfully requested.

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### CONCLUSIONS

In view of the remarks presented above, Applicant submits that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

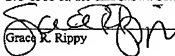


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August 22, 2005  
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